

Add Revenue and Taxation Code Section 6092.5 to the Sales and Use Tax Law to provide that every person selling a vehicle at auction may not accept a resale certificate from a purchaser who is not a licensed dealer, dismantler, auto repair dealer, or scrap metal processor.

Source: Sales and Use Tax Department

Existing Law. Revenue and Taxation Code (RTC) Section 6272 provides that the term “vehicle” is as defined in Vehicle Code (VC) Section 670 and shall include off-highway motor vehicles subject to identification under VC Division 16.5 (commencing with Section 38000). RTC Section 6275 provides that every person making any retail sale of a vehicle required to be registered under the VC or subject to identification under Division 16.5 is a retailer of the vehicle for the purposes of the Sales and Use Tax Law regardless of whether he or she is a retailer by reason of any other provision of the Sales and Use Tax Law. RTC Section 6282 exempts from the sales tax the gross receipts from the sales of vehicles required to be registered under the VC when the retailer is other than a person licensed under the VC as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to VC Section 11615.5. RTC Section 6292 provides that when a vehicle is sold at retail by other than a person licensed under the VC as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Motor Vehicles (DMV).

These sections provide that every person making a retail sale of a vehicle is a retailer, but the retailer is exempt from the sales tax when the retailer is not a licensed dealer with DMV. In this instance, the applicable tax is a use tax rather than a sales tax. The purchaser of the vehicle is required to pay the use tax to the DMV at the time of registration.

VC Chapter 3 of Division 5, commencing with Section 11500 provides for the requirements of a person wishing to engage in business as an automobile dismantler. The law requires such a person to have a permanent place of business and to apply for a dismantler’s license with the DMV. VC Section 220 defines an “automobile dismantler” as any person engaged in the business as buying, selling, or dealing in vehicles of a type required to be registered under the VC, including non-repairable vehicles, for the purpose of dismantling the vehicles, who buys or sells the integral parts and component materials thereof, or deals in used motor vehicle parts. An automobile dismantler also includes any person that keeps or maintains two or more unregistered vehicles no longer intended for, or in condition for, legal use on the highways, whether for the purpose of resale of used parts, for the purpose of reclaiming for use some or all of the materials, or for any other purpose. VC Section 221 provides that the term “automobile dismantler” does not include an owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials.

Business and Professions Code Section 9880.1 defines an “automotive repair dealer” as a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles. This definition includes auto body repair in addition to mechanical repair. A person engaged in the business as an automotive repair dealer is required to register with the Bureau of Automotive Repair.

This Proposal. This proposal would provide that a licensed dismantler or any person selling a vehicle at auction is presumed to be making a sale at retail. The seller may rebut this presumption by accepting a resale certificate from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. The dealer, dismantler, automotive repair dealer, or scrap metal processor issuing a resale certificate may include both an in-state purchaser that has a seller’s permit and an out-of-state purchaser that does not have a seller’s permit. The resale certificate must include the license or registration number issued to the dealer, dismantler or automotive repair dealer, as applicable. If a seller fails to timely obtain a resale certificate, the BOE may prescribe alternative methods of verifying the transaction is a valid sale for resale to a dealer, dismantler, automotive repair dealer, or scrap metal processor.

Background. The sales tax is generally imposed upon the retailer for the privilege of selling tangible personal property at retail in this state. If a person is purchasing property for the purpose of reselling the property prior to any use of the property, the seller may accept a resale certificate from the purchaser. Acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax. The purchaser is then liable for the sales tax on the subsequent retail sale of the property (unless the property is again sold for resale or is exempt for some other reason).

The same provisions generally apply to sales of vehicles. However, persons engaged in the business of selling vehicles are generally required by the VC to obtain a license to sell vehicles from the DMV. This license is generally referred to as a dealer’s license. Persons engaged in the business of auto dismantling must obtain a dismantler’s license from DMV. Sales of vehicles for resale between licensed dealers and dismantlers are generally permitted and require the issuance and acceptance in good faith of a resale certificate.

The sale of a vehicle by a non-dealer is still a retail sale. These are generally referred to as private party sales. A private party seller may or may not have a seller’s permit. In a private party sale, the non-dealer seller is not liable for the sales tax on the sale of the vehicle, even if the seller has a seller’s permit. Instead, the purchaser is liable for use tax. The purchaser pays the use tax to the DMV at the time of registration. Both the purchaser and private party seller complete necessary forms notifying the DMV of the vehicle sale.

The problem area involves salvage certificate vehicles. A salvage certificate vehicle is a vehicle that has been wrecked or damaged, and the owner, insurance company, financial institution or leasing company considers it too expensive to repair. Generally, this involves forwarding the certificate of ownership, license plates, and a required fee to the DMV. The DMV then issues

a salvage certificate for the vehicle. The vehicle may subsequently be repaired and re-registered with the DMV. To be re-registered, the vehicle must pass a safety inspection with the DMV or the California Highway Patrol. It is then classified as a “revived salvage” or “salvaged” vehicle.

Since a salvage certificate vehicle is not subject to registration with DMV, an auto auction selling such a vehicle may currently accept a resale certificate from any person with a seller’s permit, not just a licensed dealer. For example, a person with a seller’s permit for the operation of a restaurant may properly issue a resale certificate for the purchase of a salvage certificate vehicle from an auto auction if the salvage certificate vehicle will be resold by the purchaser. The purchaser may resell the salvage certificate vehicle as-is, sell the various parts and components of the vehicle to different people, or repair the vehicle so that it may be resold as a vehicle that may be operated on the highway again.

Audits and investigations have disclosed permit holders that are not licensed dealers are acquiring salvage certificate vehicles by issuing a resale certificate, and are not reporting any subsequent sales of vehicles. Additionally, purchasers do not appear to be registering the vehicles with DMV and reporting use tax.

This proposal is intended to close a tax gap in the auto auction industry that allow purchasers who are not properly licensed to sell, repair, or dismantle the vehicle to purchase vehicles without tax by issuing a resale certificate at the time of purchase at a salvage auto auction. This proposal would require salvage auto auctions to collect tax on the sale of any vehicle that is sold to any person other than a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. The auto auction may also accept a resale certificate from any person duly licensed in another state, country or jurisdiction as a dealer, dismantler, automotive repair dealer, or scrap metal processor.

Section 6092.5 is added to the Revenue and Taxation Code to read:

6092.5. (a) Every qualified person making any sale of a mobilehome or commercial coach required to be registered annually under the Health and Safety Code, or of a vehicle required to be registered under the Vehicle Code or subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code, or of any salvage certificate vehicle as defined in section 11515 of the Vehicle Code, is presumed to be making a sale at retail and not a sale for resale. The presumption may be rebutted by taking a resale certificate from any of the following:

(1) a person who certifies they are licensed, registered, regulated or certificated under the Health and Safety Code or the Vehicle Code as a dealer or dismantler, or

(2) a person who certifies they are licensed, registered, regulated or certificated under the Business and Professions Code as an automotive repair dealer or they qualify as a scrap metal processor as described in the Vehicle Code, but do not qualify as a dealer or dismantler as defined in the Vehicle Code, or

(3) a person who certifies they are licensed, registered, regulated, or certificated or otherwise authorized by another state, country or jurisdiction to do business as a dealer, dismantler, automotive repairer or scrap metal processor.

(b) A qualified person shall not accept a resale certificate from any person except as provided in subdivision (a).

(c)(1) In addition to the requirements of sections 6093 and 6243, the certificate shall include the license or registration number of the dealer, dismantler, or automotive repair dealer, as applicable. If the purchaser is not required to hold a seller's permit because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of the seller's permit number. The certificate issued by a purchaser pursuant to this section shall be substantially in such form as the board may prescribe.

(2) A qualified person who does not timely obtain a resale certificate as provided in this section may use alternative methods as prescribed by the board to rebut the presumption provided in subdivision (a).

(d) For the purposes of this section, the term "qualified person" means a person selling a vehicle at auction or a licensed dismantler selling a vehicle.